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JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

The following questions are presented:

1. Does compulsory fluoridation of a municipal water system violate petitioners' right to privacy as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution?
2. Does a state statute which provides for fluoridation of water supplies serving 5,000 or more persons deny Equal Protection of the laws to those persons residing within a water supply district required to fluoridate?
3. Does a state statute violate the United States Constitution by requiring fluoridation subject to a referendum election thereon in the affected subdivisions, when holding the election provided for is difficult or impossible in some subdivisions?

CONSTITUTIONS, STATUTES AND ORDINANCES APPLICABLE

Petitioners have cited the constitutions, statutes and ordinances applicable to this case, with the exception of the Tenth Amendment to the United States Constitution, which provides as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATEMENT OF THE CASE

Ohio Revised Code Section 6111.13 became effective on November 17, 1969. Generally, it required public water supply and water-works systems supplying water to twenty thousand or more persons to fluoridate such water supplies on or before January 1, 1971. Water supply systems supplying water to between five and twenty thousand persons were required to fluoridate on or before January 1, 1972.

The water supply system of the City of Columbus was, under Section 6111.13, required to fluoridate by the earlier date, but in fact did not institute fluoridation until January 17, 1973. The fluoridation of the Columbus water supply was done after ordinances providing for fluoridation were passed by the City Council. It has been the contention of respondents Moody and Jackson in this case that their actions were taken pursuant to these ordinances rather than Ohio Revised Code Section 6111.13.

Petitioners filed the instant action on August 4, 1972. In their Complaint they alleged that the enforcement of the state statute and municipal ordinances (contained in the Petition) for the purpose of fluoridation violated their rights to Due Process and Equal Protection as guaranteed by the Fourteenth Amendment to the United States Constitution. Petitioners requested the District Court to convene a three-judge court, pursuant to 28 U.S.C. 2281, for the purpose of: (1) declaring Ohio Revised Code Section 6111.13 unconstitutional; (2) enjoining the Director of the Ohio Department of Health from enforcing Section 6111.13; and (3) enjoining the Mayor and the Director of Public Service of the City of Columbus from enforcing City of Columbus ordinances nos. 1739-71 and 1162-72, which provided for and implemented fluoridation.

District Judge Carl B. Rubin granted respondents' motions to dismiss without convening a three-judge court,

on the ground that the court was without subject matter jurisdiction since no substantial federal question was presented. On April 17, 1973 the Court of Appeals for the Sixth Circuit affirmed the decision of the District Court. The case is now before this Court on Petition for a Writ of Certiorari.

ARGUMENT

A. There is no substantial federal question.

Petitioners' contentions do not merit review by this Court. A long line of decisions, by this and other courts, has very clearly established that fluoridation is a valid exercise of the police power and does not therefore violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Petitioners other claims are even more insubstantial and are predicated upon the particular nature of Ohio Revised Code Section 6111.13. Even if this Court should consider this case on the merits, and should find that Ohio Revised Code Section 6111.13 is unconstitutional, it would still face the question of the legality under federal and Ohio law of the ordinances of the City of Columbus requiring fluoridation.

This Court, moreover, recently dismissed a case raising the same issues raised herein on the ground that it did not present a substantial federal question. *Kraus v. City of Cleveland*, 163 Ohio St. 559, 127 NE2d 609 (1955), Appeal dismissed for want of a substantial federal question, 351 U.S. 935 (1956). And finally, this respondent brings to the attention of the Court the fact that, as of January 17, 1973, fluoride has been introduced into and contained in the water supply the subject of this case.

For the above reasons, and for the reasons expressed in the discussion below, this case is completely inappropriate for review by this Court.

B. There is no conflict of decisions.

Kraus v. City of Cleveland, supra., was preceded and followed by decisions of other courts uniformly holding that fluoridation does not violate Due Process rights. *Chapman v. City of Shreveport*, 225 La. 859, 74 So. 2d 142 (1954), Appeal dismissed for want of a substantial federal question, 348 U.S. 892 (1954); *Dowell v. City of Tulsa*, 273 P.2d 859 (Okl., 1954), Cert. denied 348 U.S. 912 (1955); *Ready v. St. Louis County Water Co.*, 352 S.W.2d 622 (Mo., 1962), Appeal dismissed and Certiorari denied 371 U.S. 8 (1962); *Crawford v. City of Detroit*, 389 F.2d 1001 (C.A. 6, 1968).

There is no decision by any court to this respondent's knowledge that refutes the constitutionality of water fluoridation requirements. As discussed *infra*, the decisions upholding water fluoridation requirements rest upon logic and solid authority under the Due Process and Equal Protection Clauses to the Fourteenth Amendment to the United States Constitution.

C. The decision below is clearly correct.

This Court, in a long line of decisions, has held that the Due Process Clause does not provide ". . . an unlimited right to do with one's body as one pleases . . ." *Roe v. Wade*, 410 U.S. 113, (41 L.W. 4213, 4226) (1973). Thus, in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) and *Buck v. Bell*, 274 U.S. 200 (1927) this Court upheld compulsory smallpox vaccination and the sterilization of incompetents against Due Process attack. And in *Roe v. Wade, supra.*, the Court, citing the above decisions, clearly held that a state had an interest in the health of the individual as well as the community, which it could protect through appropriate legislation. (410 U.S. 113, 41 L.W. 4213, 4225, 4226).

The power of a state to protect and promote the health of its citizens is one reserved by the Tenth Amendment.

It cannot be denied that dental caries are a serious and widespread health problem, which the states or their subdivisions can attempt to correct through appropriate legislation.

Petitioners Equal Protection contentions likewise do not merit consideration by this Court. Even if they did have validity, which they do not, these arguments depend upon peculiarities of the Ohio legislation and do not have such public importance as to require a hearing on the merits.

Ohio Revised Code Section 6111.13 exempts water supplies serving 5000 persons or less from the requirement of water fluoridation. As held by Judge Rubin in this case, the Equal Protection Clause does not prevent the making of classifications, and legislating differently for the groups so classified so long as the classifications are reasonable and "... rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike." *F.S. Royster Guano Co. v. Virginia,* 253 U.S. 412 (1920); *Reed v. Reed,* 404 U.S. 71 (1971); *Schapiro v. Thompson,* 394 U.S. 618 (1969); *Rinaldi v. Yeager,* 382 U.S. 305 (1966); *Williams v. San Francisco Unified School District,* No. 72-305 (N.D. Calif.), –F. Supp.–(1972).

The distinction in Ohio Revised Code Section 6111.13 between municipalities having populations of 5000 persons or more, and those with less, accords to that of the Ohio Constitution in distinguishing cities and villages. [Article XVIII, Section 1, Ohio Constitution] Municipal corporations of five thousand population or over are cities; smaller municipalities are villages. It is evident that the limitation of mandatory fluoridation to cities has a rational basis. Fluoridation equipment and materials involve a substantial cost. Below a certain population level the fluoridation of water systems becomes inefficient and overly expensive.

These are the type of practical considerations which the legislature can take into account in classifying for the purpose of legislation.

District Judge Rubin recognized the constitutionality of the Ohio legislation under the clearly defined principles of Equal Protection.

> There is no federal constitutional requirement that a state exercise its police powers, to the fullest extent, at any given time, nor that a state law, from the point of view of equal protection necessity, has a uniform application. Because the statutory classification is parallel to the state constitutional provision and does not affect "preferred" constitutional guarantees, we do not think the State need justify the enactment under the heavier burden of "compelling state interest." See *Schapiro v. Thompson, supra.* For these reasons plaintiffs' foregoing contentions under the Equal Protection Clause are without merit. (Appendix, pp. A5, A6)

Petitioners third and final contention is that Ohio Revised Code Section 6111.13 is unconstitutional because it provided for a local referendum election on fluoridation, but by its terms made such an election difficult or impossible to hold in certain areas. If this case had come to hearing, petitioners' contention that the referendum was impossible of implementation would not have been borne out by evidence. Numerous Ohio cities held such a referendum, including Mansfield, Middletown and Springfield.

Putting aside this factual question, however, it is obvious that unless the referendum provision of Section 6111.13 discriminated between distinguishable classes or groups of persons, the mere practical difficulties inherent in holding such an election raises no inference of Constitutional violation. Petitioners do not even contend this. It is thus clear that no Constitutional issue is raised by this contention.

CONCLUSION

From the above discussion it is obvious that the decisions of the District Court and Court of Appeals turned upon well established principles of Due Process and Equal Protection in finding that no substantial federal question was presented. These principles are simply that states can constitutionally enact legislation to protect the health of their citizens, and that such legislation can be rationally tailored to produce the desired result. There is certainly no important or novel federal issue herein presented.

Even if there were important federal questions present in this case, the Court would likely not reach them. If Ohio Revised Code Section 6111.13 should be constitutionally invalid, the Court would still have before it the propriety of the Columbus municipal ordinances mandating fluoridation. This subsidiary question, which was not reached by the District Court or Court of Appeals, involves questions of Ohio law that are inappropriate for consideration by this Court.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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